

the period differs from the amount the provider claimed. The notice must also inform the provider of its right to an intermediary or Board hearing (see §§ 405.1809, 405.1811, 405.1815, 405.1835, and 405.1843) and that the provider must request the hearing within 180 days after the date of the notice.

(c) *Use of notice as basis for recoupment of overpayments.* The intermediary's determination contained in its notice is the basis for making the retroactive adjustment (required by § 413.64(f) of this chapter) to any program payments made to the provider during the period to which the determination applies, including recoupment under § 405.373 from ongoing payments to the provider of any overpayments to the provider identified in the determination. Recoupment is made notwithstanding any request for hearing on the determination the provider may make under § 405.1811 or § 405.1835.

[48 FR 39834, Sept. 1, 1983, as amended at 49 FR 322, Jan 3, 1984; 51 FR 34793, Sept. 30, 1986; 61 FR 63748, Dec. 2, 1996]

**§ 405.1804 Matters not subject to administrative and judicial review under prospective payment.**

Neither administrative nor judicial review is available for controversies about the following matters:

- (a) The determination of the requirement, or the proportional amount, of any budget neutrality adjustment in the prospective payment rates.
- (b) The establishment of—
  - (1) Diagnosis related groups (DRGs);
  - (2) The methodology for the classification of inpatient discharges within the DRGs; or
  - (3) Appropriate weighting factors that reflect the relative hospital resources used with respect to discharge within each DRG.

[49 FR 322, Jan. 1, 1984]

**§ 405.1805 Parties to intermediary determination.**

The parties to the intermediary's determination are the provider and any other entity found by the intermediary to be a related organization of the provider under § 413.17 of this chapter.

[48 FR 39835, Sept. 1, 1983, as amended at 51 FR 34793, Sept. 30, 1986]

**§ 405.1807 Effect of intermediary determination.**

The determination shall be final and binding on the party or parties to such determination unless:

- (a) An intermediary hearing is requested in accordance with § 405.1811 and an intermediary hearing decision rendered in accordance with § 405.1831; or
- (b) The intermediary determination is revised in accordance with § 405.1885; or
- (c) A Board hearing is requested in accordance with § 405.1835 and a hearing decision rendered pursuant thereto.

**§ 405.1809 Intermediary hearing procedures.**

(a) *Hearings.* Each intermediary must establish and maintain written procedures for intermediary hearings, in accordance with the regulations in this subpart, for resolving issues that may arise between the intermediary and a provider concerning the amount of reasonable cost reimbursement, or prospective payment due the provider (except as provided in § 405.1804) under the Medicare program. The procedures must provide for a hearing on the intermediary determination contained in the notice of program reimbursement (§ 405.1803), if the provider files a timely request for a hearing.

(b) *Amount in controversy.* In order for an intermediary to grant a hearing, the following dates and amounts in controversy apply:

- (1) For cost reporting periods ending prior to June 30, 1973, the amount of program reimbursement in controversy must be at least \$1000.
- (2) For cost reporting periods ending on or after June 30, 1973, the amount of program reimbursement in controversy must be at least \$1000 but less than \$10,000.

[48 FR 39835, Sept. 1, 1983, as amended at 49 FR 323, Jan. 1, 1984]

**§ 405.1811 Right to intermediary hearing; time, place, form, and content of request for intermediary hearing.**

(a) A provider that has been furnished a notice of amount of program reimbursement may request an intermediary hearing if it is dissatisfied with the intermediary's determination

#### **§ 405.1813**

contained in the notice and the amount in controversy requirement described in § 405.1809 is met. The request must be in writing and be filed with the intermediary within 180 calendar days after the date of the notice. (See § 405.1835(c)). No other individual, entity, or party has the right to an intermediary hearing.

(b) The request must (1) identify the aspect(s) of the determination with which the provider is dissatisfied, and (2) explain why the provider believes the determination on these matters is incorrect, and (3) be submitted with any documentary evidence the provider considers necessary to support its position.

(c) Following the timely filing of the request for hearing, the provider may identify in writing, prior to the onset of the hearing proceedings, additional aspects of the determination with which it is dissatisfied and furnish any documentary evidence in support thereof. If such additional aspects are submitted, the hearing officer may postpone the hearing to allow for his examination of such additional aspects.

[39 FR 34515, Sept. 26, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 48 FR 39835, Sept. 1, 1983]

#### **§ 405.1813 Failure to timely request an intermediary hearing.**

If a provider requests an intermediary hearing on an intermediary's determination after the time limit prescribed in § 405.1811, the designated intermediary hearing officer or panel of hearing officers will dismiss the request and furnish the provider a written notice that explains the time limitation, except that for good cause shown, the time limit prescribed in § 405.1811 may be extended. However, an extension may not be granted if the extension request is filed more than 3 years after the date of the original notice of the intermediary determination.

[48 FR 39835, Sept. 1, 1983]

#### **§ 405.1815 Parties to the intermediary hearing.**

The parties to the intermediary hearing shall be the parties to the intermediary determination and any other entity determined by the intermediary

#### **42 CFR Ch. IV (10–1–05 Edition)**

to be a related organization of such provider. Said parties shall be given reasonable notice of the time, date, and place of such hearing. Neither the intermediary nor the Centers for Medicare & Medicaid Services are parties (see § 405.1819).

#### **§ 405.1817 Hearing officer or panel of hearing officers authorized to conduct intermediary hearing; disqualification of officers.**

The intermediary hearing provided for in § 405.1809 shall be conducted by a hearing officer or panel of hearing officers designated by the intermediary. Such hearing officer or officers shall be persons knowledgeable in the field of health care reimbursement. The hearing officer or officers shall not have had any direct responsibility for the program reimbursement determination with respect to which a request for hearing is filed; no hearing officer (or officers) shall conduct a hearing in a case in which he is prejudiced or partial with respect to any party, or where he has any interest in the matter pending for determination before him. Notice of any objection which a party may have with respect to a hearing officer shall be presented in writing to such officer by the objecting party at the party's earliest opportunity. The hearing officer shall consider the objection and shall, at his discretion, either proceed in the conduct of the hearing or withdraw. If the hearing officer does not withdraw, the objecting party may, after the hearing, present his objections to an executive official of the intermediary, who shall rule promptly on the objection.

#### **§ 405.1819 Conduct of intermediary hearing.**

The hearing shall be open to all parties thereto (see § 405.1815) and to representatives of the intermediary and of the Centers for Medicare & Medicaid Services (see § 405.1815). The hearing officer(s) shall inquire fully into all of the matters at issue and shall receive into evidence the testimony and any documents which are relevant and material to such matters. If the hearing officer(s) believes that there is relevant and material evidence available which has not been presented at the hearing,